No. 85-1244

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CITY OF PLEASANT GROVE,

Appellant,

v.

THE UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF THE DEMOCRATIC NATIONAL COMMITTEE AS AMICUS CURIAE

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August 2, 1986

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Pursuant to Rule 36 of the Rules of the Supreme Court of the United States, the Democratic National Committee respectfully moves for leave to file a brief *amicus curiae* in the above-captioned proceeding, and in support thereof states:

1. While appellee has consented to filing of the attached brief *amicus curiae*, appellant has refused the Democratic National Committee's request for such consent.

2. As explained more fully in the attached brief, failure to affirm the decision below would substantially and adversely affect the Voting Rights Act, landmark legislation with respect to which the Democratic National Committee has a vital and continuing interest as well as special expertise not possessed by the parties.

3. Accordingly, the Democratic National Committee seeks this opportunity to make its views known to the Court and to assist the Court in its decision in this proceeding.

Counsel for the Democratic National Committee hereby respectfully request that the Court grant this Motion for Leave to File Brief *Amicus Curiae*.

Respectfully submitted,

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BRIEF OF THE DEMOCRATIC NATIONAL COMMITTEE AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The Democratic National Committee has general responsibility for the conduct of the affairs of the Democratic Party between the Party's National Conventions. It is composed of representatives from the Party's constituent party organizations in each of the several states, the District of Columbia and American Territories; of delegates elected at large; and of several *ex officio* members drawn from other affiliated organizations. As one of the country's two major political parties, the Democratic Party is deeply familiar with the status of voting rights and electoral practices across the country. It has had a long and abiding interest in civil rights, and in particular, voting rights.

The Democratic Party was present at the creation of the Voting Rights Act. The Act, enacted in 1965, is part of the legacy of President John F. Kennedy and one of the proudest achievements of President Lyndon B. Johnson. In the twenty-one years since 1965, this country, particularly the South, has made enormous strides in the area of voting rights. It is closer now than ever to fulfilling the promise of the Fifteenth Amendment: that "the right of citizens of the United States to vote shall not be denied or abridged on account of race, color or previous condition of servitude". Yet, as the Democratic Party realized when it fought for the extension of the Act in 1982, and when it pledged in its 1984 platform to use its "full resources . . . to investigate and root out any discriminatory voting barriers", strict and vigorous enforcement of the Act remains necessary.

The Democratic Party is filing here as *amicus curiae* because it has a special interest in this landmark legislation—and because it believes that if appellant prevails, the spirit and the purpose and the promise of the Voting Rights Act will be irreparably injured. Appellant's view would do nothing less than create a retroactive "grandfather clause" that would give Pleasant Grove and towns like it—towns which have successfully preserved the last vestiges of the discrimination of the Old South—a virtual exemption from scrutiny under Section 5 of the Voting Rights Act. The Court's decision here could thus well determine the scope and vigor of the voting rights and civil rights legislation that the Democratic Party and others have fought so hard to achieve.

INTRODUCTION AND SUMMARY OF ARGUMENT

The issue before this Court is a narrow one: Can an all-white municipality with a long history of purposeful discrimination, having successfully excluded black residents for decades, escape scrutiny under Section 5 of the Voting Rights Act because it has no black residents whose voting power can be diluted?

The all-white city of Pleasant Grove, Alabama, seeks a declaration under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, that its proposed annexation of a large, uninhabited parcel of land to its west has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color. Appellant Pleasant Grove bases its argument on the fact that it has no black residents and therefore its planned annexation cannot reduce black voting strength. As we show below, Pleasant Grove's plan falls afoul of both the "purpose" and the "effect" prongs of Section 5. The annexation proposal is animated by the same racially discriminatory intentions that have infected numerous Pleasant Grove policies, including those involving housing, zoning, hiring and education. Moreover, Pleasant Grove's plan would have the unmistakable effect of rewarding an all-white enclave for its extraordinary record of unmitigated past discrimination. Accordingly, this Court should affirm the judgment of the district court below and reject Pleasant Grove's request for declaratory judgment.

ARGUMENT

PLEASANT GROVE'S ANNEXATION PLAN VIOLATES SECTION 5 OF THE VOTING RIGHTS ACT.

The Voting Rights Act of 1965 was designed to eradicate "the blight of racial discrimination in voting", "an insidious and pervasive evil" that had dogged parts of the South since Reconstruction. *South Carolina v. Katzenbach*, 383 U.S. 301, 308, 309 (1966). The Act featured many stringent remedies—including bans on literacy tests and poll taxes and the imposition of federal monitors to scrutinize state compliance—but none was more essential than its Section 5. That section provided for the suspension of all new voting practices pending federal review and it flatly forbade states and localities from instituting any new such practices that had either the purpose *or* the effect "of denying or abridging the right to vote

on account of race or color". 42 U.S.C. § 1973c. In the years since its enactment, Section 5 has been deployed to monitor a range of potentially racially discriminatory voting practices, including reapportionment schemes,[1] changes in voting procedures,[2] changes in forms of government,[3] and, most important for this case, municipal annexation plans.[4]

It is against this backdrop of vigorous judicial enforcement of Section 5 that appellant Pleasant Grove, an all-white Alabama municipality with a long legacy of racial discrimination, seeks a declaration from this Court that its plan to annex the uninhabited "Western Addition" is permissible.[5] The crux of

[1] *See, e.g., Georgia v. United States,* 411 U.S. 526 (1973) (state forbidden from holding elections under reapportionment scheme deemed to violate Section 5).

[2] *See, e.g., Allen v. State Board of Elections,* 393 U.S. 544 (1969) (broad array of electoral changes in Mississippi and Virginia held invalid in absence of Section 5 approval).

[3] *See, e.g., City of Rome v. United States,* 446 U.S. 156 (1980) (city's plan to change election rules, ward system and residency requirements held to violate Section 5).

[4] *See, e.g., Perkins v. Matthews,* 400 U.S. 379 (1971) (holding that city's annexations of adjacent areas without federal approval violate Section 5); *City of Richmond v. United States,* 422 U.S. 358 (1975) (conditioning approval of city's annexation of predominantly white area on shift from at-large to ward voting system); *City of Petersburg v. United States,* 354 F. Supp. 1021 (D.D.C. 1972), *aff'd,* 410 U.S. 962, *aff'd,* 412 U.S. 901 (1973) (same); *City of Port Arthur v. United States,* 459 U.S. 159 (1983) (holding that in absence of other electoral reforms, city's annexation of predominantly white area so as to reduce black population from 45.21% to 40.56% impermissibly discriminated against black residents); *City of Rome v. United States,* 446 U.S. 156 (1980) (holding that annexation of 13 areas diluted black vote and thus violated Section 5).

[5] Under Section 5, municipalities wishing to annex land must obtain either "preclearance" from the Justice Department or a declaratory judgment from the District Court for the District of Columbia. *See* 42 U.S.C. § 1973c. The Attorney General has denied Pleasant Grove preclearance for its proposed annexation in part because of Pleasant Grove's record of refusing to annex contiguous areas populated by blacks who had petitioned for annexation. J.S. App. 2b.

the city's argument is that its plan is somehow qualitatively different from those municipal annexations invalidated under Section 5 in the past. Its brief emphasizes two distinctions: (1) the fact that Pleasant Grove, because it is 100 percent white, has no black citizens whose voting power could be diluted; and (2) the fact that the land it seeks to annex is presently unoccupied. App. Br. 19. As the district court below concluded, however, these are distinctions without a difference. Pleasant Grove's plan fails both threshold tests for approval under Section 5 of the Voting Rights Act: it is born of a discriminatory purpose, and it promises to have a discriminatory effect. Unable to meet its burden of proving the absence of both these elements, Pleasant Grove's plan must fall.

A. Pleasant Grove's Annexation Plan Has the Impermissible Purpose of Depriving Blacks of Their Political and Voting Rights.

Municipal annexations proposed for the purpose of "denying or abridging the right to vote on account of race" are invalid under Section 5 of the Voting Rights Act. 42 U.S.C. § 1973c. This is so even when such annexations promise to have no racially discriminatory impact whatsoever. *Port Arthur v. United States,* 459 U.S. 159, 168 (1982). In this case, as the district court below found, Pleasant Grove's annexation plan evinces a "mass of evidence of a specific racially biased annexation policy, supported by what must be, for this day and age, an astonishing hostility to the presence and the rights of black Americans". J.S. App. 12a. It therefore cannot stand.

Pleasant Grove's brief oddly omits *any* discussion of Section 5's *purpose* requirement, confining its discussion to an attempted refutation of the government's *effect* argument. Appellant's failure to rebut the district court's finding that it acted with an impermissible discriminatory purpose in and of

itself warrants affirmance by this Court.[6] As Section 5 explicitly states, and as this Court has repeatedly observed, municipalities seeking preclearance for an annexation under Section 5 have the burden of proving *both* non-discriminatory purpose and non-discriminatory effect. As this Court stated in *City of Richmond v. United States*, a case on which appellant's "effect" argument relies almost exclusively:

> "An official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race, has no legitimacy at all under our Constitution or under the [voting rights] statute. . . . Section 5 forbids voting changes taken with the purpose of denying the vote on grounds of race or color." 422 U.S. 358, 378 (1975).[7]

[6] Even if appellant *did* challenge the district court's findings, it would have to prove them "clearly erroneous" in order to reverse. As this Court noted in *Pullman-Standard v. Swint*, district court findings on issues of intent are generally treated as factual matters and can only be overturned if clearly erroneous. 456 U.S. 273, 288 (1982). *See also Rogers v. Lodge*, 458 U.S. 618, 623 (1982) ("the same clearly-erroneous standard applies to the trial court's finding in this case that the at-large system in Burke County is being maintained for discriminatory purposes"); *Thornburg v. Gingles*, 106 S.Ct. 2752 (1986) ("the clearly-erroneous test . . . is the appropriate standard for appellate review of a finding of vote dilution").

[7] *See also City of Rome v. United States*, 446 U.S. 156, 172 (1980) ("By describing the elements of discriminatory purpose and effect in the conjunctive Congress plainly intended that a voting practice not be precleared unless *both* discriminatory purpose and effect are absent") (emphasis in original); *City of Port Arthur*, 459 U.S. at 168 ("even if a [proposed] electoral scheme might otherwise be said to reflect the political strength of the minority community, the plan would nevertheless be invalid if adopted for racially-discriminatory purposes"); *City of Lockhart v. United States*, 460 U.S. 126, 130 (1983) (agreeing with district court that cities "must prove both the absence of discriminatory effect and discriminatory purposes"); *City of Petersburg v. United States*, 354 F. Supp. 1021, 1027 (D.D.C. 1972) (stating that municipalities proposing electoral changes confront "heavy burden" of proving both no discriminatory purpose and no discriminatory effect).

Pleasant Grove's racial bias has manifested itself in numerous ways. These include:

1. Pleasant Grove's Discriminatory Record Towards Annexation Requests

The city's record of responses to annexation opportunities in the recent past demonstrates a clear preference for white communities. As the district court below noted:

> "During its history, Pleasant Grove approved the following four annexation requests: a parcel of land to the southwest of the city (1945); land in the northern, southern and western areas (1967); the Glasgow Addition (1971) and the Western Addition (1979). None of these areas had any black residents. During the same period, the city rejected annexation petitions from the Woodward School (August, 1971), the Pleasant Grove Highlands (April 18, 1979) and the Dolomite area (October, 1979). Each of these areas has been identified as a 'black' area." J.S. App. 3a-4a (footnotes omitted).

Moreover, in the two instances in which the city has chosen *not* to annex predominantly white areas, it has done so out of fear that "such annexations might have a 'mushroom effect' leading to subsequent annexations of adjacent black areas". J.S. App. 4a n.4. This, obviously, is not a legitimate fear under Section 5 of the Voting Rights Act—or otherwise.[8]

[8] Rather than attempt to account for its glaringly suspect track record, Pleasant Grove takes refuge in specious evidentiary claims. The city suggests in its brief that, because its refusal to annex the black Highlands occurred *after* its decision to seek annexation of the Western Addition, the district court erred in even considering the city's Highland's decision. App. Br. 21. That is wrong. This Court has made clear that an invidious purpose properly may be inferred from *all* relevant facts. *See infra* note 9.

Pleasant Grove also seeks to impeach the district court's use of the contrast with the black Highlands by arguing that "a non-change [the city's decision not to annex the Highlands] does not have a discriminatory effect." App. Br. 21. One need look no further than *Rogers v. Lodge*, 458 U.S. 614 (1982), in which this Court held that the mere *maintenance* of an at-large voting system amounted to a discriminatory purpose, to see the error of the City's position.

2. *Pleasant Grove's Record of Distortions*

The pretexts and distortions to which Pleasant Grove has resorted in defense of its annexation practices also provide ample evidence of the city's racially discriminatory intent. The city's explanations for the refusal to annex the black Highlands is particularly illuminating in this regard. For example:

(a) When asked to explain its rejection of the Highlands site, the city asserted that it had relied on the economic determinations of its "Annexation Committee". In fact, as found by the district court below:

(i) the committee's members were not notified of their appointments until *one year later;*

(ii) the committee met only once—if at all; and

(iii) the only information at the committee's disposal came from city officials hostile to the annexation of the black community. J.S. App. 5a-6a.

The city's reliance on the report of this committee was rightly found by the district court below to be nothing more than "a sham". J.S. App. 6a.

(b) Pleasant Grove asserts that annexing the black Highlands would not be financially advantageous, but it performed *no* economic studies and *never* "assess[ed] the economic or other impacts of annexation" prior to deciding not to annex the Highlands or the other three black neighborhoods. J.S. App. 5a.

(c) The city's *post hoc* economic justifications for its decision to annex the Western Addition, not the black Highlands, like its reliance on the Annexation Committee, are mere sham:

(i) The city asserted that annexing the black Highlands would require it to hire extra firefighters and

purchase rescue equipment, at considerable cost. In fact, as the district court found, there would be *no* additional cost—Pleasant Grove *already was* providing such services to the Highlands. J.S. App. 7a.

(ii) Furthermore, the city "applied entirely different cost methods for the needs of the [black] Highlands than they did for the [uninhabited] Western Addition"; its budget calculations ignored the considerable tax revenues that the black area would generate for the city; and it employed "highly inflated" figures to account for the revenues that the Western Addition would bring in. J.S. App. 7a-10a.

(iii) Moreover, as the trial court noted, the city's estimates of the relative costs of serving the black Highland and the uninhabited Western Additions are highly dubious. The city's "anticipated cost for serving the 79 homes in the [black] Highlands was more than the estimated cost of serving the 700 projected homes in the [unoccupied] Western Highlands addition although the former is more easily accessible than the latter". J.S. App. 7a. Indeed, appellant concedes that "the Highlands is in appearance equal economically to all but the newest subdivisions in the city". App. Br. 7.

This consistent record of distortion, as found by the court below, "far overshadows and outweighs the city's feeble efforts to portray its annexation policy as economically motivated". J.S. App. 12a. It is more than ample to support the district court's finding that Pleasant Grove's purported rationale was "no more than a transparent attempt to put a valid gloss on decisions which plainly had a racial purpose". J.S. App. 10a.

3. Pleasant Grove's Long History of Racial Discrimination

Finally, Pleasant Grove's unwavering history of city-sanctioned racial discrimination appropriately gives rise to the inference that its decision to annex the Western Addition emanates from racial bias. As this Court noted in *Rogers v. Lodge*, in which it struck down a Georgia county's at-large election system, "evidence of historical discrimination is relevant to drawing an inference of purposeful discrimination". 458 U.S. 613, 625 (1982).[9]

Racial discrimination has permeated numerous corners of Pleasant Grove life. As the district court found, the city's housing and zoning policies have long directly and indirectly excluded blacks. J.S. App. 10a-11a.[10] Most recently, the city has actively sought to perpetuate its racial homogeneity by "operating a dual white-black housing market through a variety of devices, such as advertising and marketing directed exclusively to white buyers, and racial steering". J.S. App. 11a. Moreover, the district court found, Pleasant Grove "has never hired a black person, preferring to draw its employees from as far away as fifty miles rather than to hire blacks living in surrounding Jefferson County, which is one-third black." J.S. App. 11a. Its educational practices, too, have exuded racial bias. When an Alabama federal court ordered the county to

[9] *See also Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266-67 (1977) (proof of discriminatory intent requires "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available"; the "historical background of a decision is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes"); *Washington v. Davis*, 426 U.S. 229, 242 (1976) ("invidious discriminatory purpose may often be inferred from the totality of relevant facts"); *Busbee v. Smith*, 549 F. Supp. 494, 516-17 (D.D.C. 1982), *aff'd*, 459 U.S. 1166 (1983) (imputing discriminatory purpose to county in Section 5 challenge to at-large voting system).

[10] *See also Wheeler v. City of Pleasant Grove*, C.A. No. 78-G-1150-5 (N.D. Ala. 1979) (holding that Pleasant Grove's exclusionary zoning ordinance had an impermissibly racially restrictive effect).

integrate its school system seventeen years ago,[11] Pleasant Grove voted to *secede* from the county school system that very evening. J.S. App. 11a. For five more years, until 1972, the city maintained its own separate "white" school system, financed by steep local taxes. That system ended only when the Fifth Circuit abolished it by court order.[12] The list of other city actions manifesting racial bias is as lengthy and as recent as it is shocking.[13]

Pleasant Grove's racially discriminatory purposes, in short, could not be more clear. The city's long and still unfolding record of excluding blacks; its long-standing refusal to annex any black areas even as it was welcoming white ones; and the egregious set of distortions to which it has resorted when asked to account for its skewed annexation record—all point to impermissible intentions. A city need not flatly declare its racial animus in order for it to have its plans invalidated under Section 5, *see supra* note 9, yet in this case, Pleasant Grove has done just that. To uphold Pleasant Grove's annexation plan would be to read the "purpose" requirement out of Section 5 altogether. That this Court should not do.

B. Pleasant Grove's Annexation Plan Would Have the Impermissible Effects of Depriving Blacks of Voting Rights and of Rewarding the City for its Past Discrimination.

Regardless of a municipality's purposes, annexation plans or other changes of voting practice that have the effect of

[11] *See Stout v. Jefferson County Board of Education*, C.A. No. 65-396 (N.D. Ala. 1969).

[12] *See Stout v. Jefferson County Board of Education*, No. 72-1102, *aff'd*, 466 F.2d 1213 (5th Cir. 1972).

[13] The district court, rejecting Pleasant Grove's motion for summary judgment below, took note of the following other Pleasant Grove actions:

> "It may also be noted that the city council has authorized the formation of a chapter of the White Citizens Council; thanked Governor George Wallace for his fight against integration; and condemned the Birmingham Bar Association for its expression of moral support to District Judge Pointer for his efforts in *Stout*." J.S. App. 5b n.13.

"undervalu[ing] the black strength in the community after annexation" are invalid. *City of Richmond*, 422 U.S. at 372. In this case, approval of Pleasant Grove's plans to annex the Western Addition would not only operate to disenfranchise blacks. It would also have the perverse and wholly unjustified effect of rewarding Pleasant Grove for its "astonishing" record of past discrimination. *See supra at 5; see also* J.S. App. 10a-12a. Accordingly, this Court should reject Pleasant Grove's annexation proposal as an extreme violation of the "effect" prong of Section 5.

1. The Fact that the Western Addition Is Presently Uninhabited in No Way Minimizes the Deleterious Impact the Annexation Would Have Upon Blacks.

Appellant's argument proceeds from the assumption that because the 439 acres comprising the Western Addition are at present uninhabited, the annexation would have no impact on black voting strength. That assumption is wrong. As the district court below specifically found, "while the Western Addition is undeveloped, its location and the city's plans indicate that *it is likely to be developed for use by white persons only*". J. S. App. 4a n.5 (emphasis added).[14] Pleasant Grove's action thus implicates one of this Court's two primary fears about municipal boundary revisions. That fear is that, "by including certain voters within the city and leaving others outside, [the city] determines who may vote in the municipal election and who may not". *Perkins v. Matthews*, 400 U.S. 379, 388 (1971).[15]

[14] Moreover, the city asserted below that it expects to receive annual tax revenues from Western Addition homes that will outstrip those of the city's most expensive homes. J.S. App. 9a. That projection strongly indicates that Pleasant Grove contemplates that the Western Addition will emerge as an expensive—and thus likely white—suburb.

[15] The other, separate concern about municipal annexations, according to *Perkins*, is that they can "dilute the weight of the votes of the voters to whom the franchise was limited before the annexation". 400 U.S. at 388. Appellant, again reading this Court's Section 5 jurisprudence through very selective lenses, wholly ignores the Court's "fencing-out" concern and instead emphasizes only its concerns about minority-vote dilution. *See also Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (municipal boundary redefinition that operates to exclude blacks held to violate Fifteenth Amendment).

Appellant's broader suggestion—that the strictures of the Voting Rights Act cannot apply to annexations of unpopulated land—represents a misreading of Congress's purposes in enacting Section 5. It is obvious to anyone that the addition of an unpopulated tract of land to a community may not affect voting power *at the instant moment*. Yet, as Congress knew when it passed Section 5, time does not stand still. As this Court emphasized in *Perkins*, "§ 5 was designed to cover changes having the *potential* for racial discrimination". 400 U.S. at 389 (emphasis added). Appellant's time-bound analysis—like Judge MacKinnon's dissenting observation that other means of redress exist to deter future city misconduct, *see* J.S. App. 22a—is thus unduly narrow. Section 5 is a rule aimed not only at present violations but also at threats of future ones. *See Dougherty County Board of Education v. White*, 439 U.S. 32, 42 (1978) (focus of Section 5 includes "potential for discrimination").[16] The likelihood found by the trial court that the Western Addition will become an all-white enclave upon being incorporated into Pleasant Grove makes this annexation bid a particularly appropriate one for Section 5 invalidation.[17]

Pleasant Grove seeks to suggest that because its annexation plan involves an uninhabited area, it is qualitatively different

[16] *See also* Motomura, *Preclearance Under Section Five of the Voting Rights Act*, 61 N.C.L. Rev. 189, 221 n.195 (noting that Justice Department often rejects preclearance requests in annexation cases in light of *anticipated* development of areas).

[17] Pleasant Grove cynically suggests that its Western Addition annexation plan would actually serve the interests of the Highlands' black residents *better* than the Highlands annexation proposal endorsed by a petition of those residents. The city states, "Instead of voting as a part of a significant minority in Jefferson County (where two out of eight state senators in the county delegation were black in 1979), the blacks residing in the Highlands [if annexed to Pleasant Grove] would vote as an insignificant minority where all councilmanic seats are elected at large". App. Br. 23. The import of this argument is that Pleasant Grove knows better than the Highlands' residents what is best for them. Such reasoning could result in precisely the sort of separatism and segregation that the framers of the Voting Rights Act sought to curb.

from the Section 5 annexation cases which this Court has previously considered. App. Br. 19. In fact, its scheme is only a new incarnation of an old yet apparently resilient theme in voting rights history: the attempt by some localities to exploit loopholes in the civil rights laws. As this Court noted in *Beer v. United States*, a legislative reapportionment case that along with *City of Richmond* provides the purported foundation of appellant's claims:

> "Section 5 was a response to a common practice in some jurisdictions of staying one step ahead of federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down." 425 U.S. 130, 140 (1976) (quoting H.R. Rep. No. 94-196 at 57-58).

This Court must not allow Pleasant Grove to skirt its legal obligations by finding purported loopholes in Section 5 jurisprudence. As this Court asserted long ago, the Fifteenth Amendment, under whose aegis the Voting Rights Act was passed, "nullifies sophisticated as well as simple-minded modes of discrimination". *Lane v. Wilson*, 307 U.S. 268, 275 (1939). Pleasant Grove's plan cannot survive Section 5 scrutiny.[18]

[18] Appellant's "defense" amounts to a repeated invocation of *Beer's* "no retrogression" principle and of *City of Richmond's* prohibition upon "significant proportionate reductions" of minority voting power. *See* App. Br. 12, 17. Such reliance is disingenuous. The verbal formulations of *Beer* and *City of Richmond* were fashioned in cases where municipal actions whittled down black voting power; thus, judicial tests focusing on "before" and "after" comparisons of proportions were wholly appropriate. Those courts did not have before them—and thus did not try to resolve—a case in which there were no black residents. In this case, by contrast, the proportion of Pleasant Grove votes wielded by blacks is *already* as low as it can ever be: it is 0%. To appellant, this fact means that there is *nothing* Pleasant Grove can possibly do that would violate Section 5, for "retrogression" is literally impossible when one starts at ground zero. That is hardly what this Court intended when it used the term "retrogression".

2. A Decision to Authorize Pleasant Grove's Annexation Plan Would Have the Impermissible Effect of Rewarding the City for Its Past Discrimination.

Pleasant Grove's "effect" argument hinges on its assertion that "because there were no black voters in Pleasant Grove . . . these annexations neither reduced the proportion of black voters in Pleasant Grove nor denied black voters representation equivalent to their political strength in the enlarged community". App. Br. 19. For the city to use its racial homogeneity as a rationale for escaping review under the Voting Rights Act is cynical in the extreme. Pleasant Grove's policies of racial discrimination and exclusion in virtually every walk of life are undeniably largely responsible for the city's failure to attract black residents. Allowing the city to bootstrap its legacy of discrimination into a successful end-run around the Voting Rights Act would send the perverse signal that discrimination can be its own reward. This Court must not send that message.[19]

[19] As the district court below aptly observed, "it would be incongruous if the city of Pleasant Grove, having succeeded in keeping all blacks out, could now successfully defend on the ground that there are no blacks in the city whose right to vote would be diluted by the annexation of white but not black subdivisions". J.S. App. 8b-9b.

Indeed, by appellant's logic, those cities that had no blacks at the time the Voting Rights Act was passed effectively received "grandfather clause" exemptions protecting them from the Act's strictures. Nothing in the history of the Act supports that interpretation in the slightest.

CONCLUSION

Section 5 of the Voting Rights Act was designed to prevent electoral changes having either the purpose or the effect of depriving blacks of their right to vote. Pleasant Grove's plan to annex the "Western Addition" is such an impermissible change, for it both bears a discriminatory purpose and threatens to have a discriminatory effect. The Democratic National Committee respectfully urges that the Court affirm the judgment of the district court below.

Respectfully submitted,

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